SUPREME COURT OF THE UNITED STATES.

No. 370.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

CHARLES HARE, SAMUEL W. HOLLADAY, AND GEORGE F. SHARP.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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a UNITED STATES OF AMERICA, *ss*:

The President of the United States of America, to the judges of the Circuit Court of the United States, for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, between the United States, plaintiffs, and Charles Hare, Samuel W. Halladay, and George F. Sharp, defendants, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the Capitol, in the city of Washington, on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of May, A. D. 1867, and of the independence of the United States, the ninety-first.

[SEAL.] GEORGE E. WHITNEY, *Clerk.*
By SAM'L NEALL, *D. C.*
DELOS LAKE,
Att'y for Pl'ff's in Error.

The above writ of error is hereby allowed.

STEPHEN J. FIELD,
Associate Justice, U. S. Sup. Court.

(The return to the within writ appears by the schedule annexed.)

The answer of the Judges of Circuit Court of the United States for the district of California.

The record and proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded. By the court.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

Endorsed: 445. United States Circuit Court, district of California. The United States, plaintiffs in error, *vs.* Chas. Hare, *et als.*, d'f'ts in error. Writ of error. Filed Oct. 31st, 1865. G. E. Whitney, clerk, pr Wheeler D. Delos Lake, att'y for the plff. in error.

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Circuit Court of the United States, tenth circuit, northern district of California.

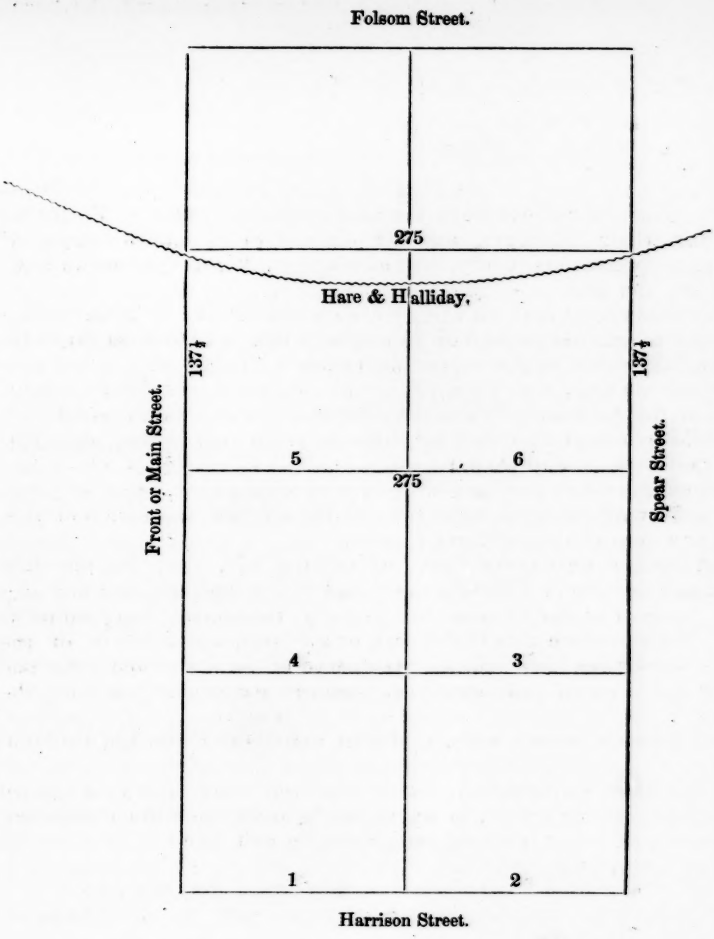
THE UNITED STATES OF AMERICA,
vs.
CHARLES HARE, S. W. HALLADAY and George F. Sharp.

The United States of America, the plaintiffs in this suit, by Delos Lake, United States attorney, complain of Charles Hare, S. W. Halladay and George F. Sharp, the defendants herein, and for cause of complaint show that heretofore, to wit, on the first day of May, A. D. 1865, the said plaintiffs were seized of an estate in fee, in and to the following described land and premises situate, lying, and being in the city and county of said Francisco, State of California, to wit: commencing at a point on the northeasterly line of Main street distant two hundred and seventy-five feet southeasterly from the easterly corner of Main (formerly Front) street and Folsom street, and running thence at a right angle northeasterly and parallel with Folsom street two hundred and seventy-five feet, to a point on the southwesterly line of Spear street; thence northwesterly along said line of Spear street one hundred and thirty-seven and one-half feet to a point; thence at a right angle southwesterly and parallel with Folsom street two hundred and seventy-five feet to a point in the said northeasterly line of Main street; and then southeasterly along said last mentioned line to the place of beginning. And being so
2 seized thereof the said defendant afterwards, to wit, on the 2nd day of May, A. D. 1865, entered into and upon the said lands and premises and ousted the plaintiffs therefrom, and they, the said defendants, now unlawfully withhold from the plaintiffs the possession thereof to the damage of said plaintiffs of five hundred dollars.

Whereupon plaintiffs bring this suit, and pray judgment against said defendants for the possession of the above described lands and premises and five hundred dollars damages with costs.

Dated May 10th, 1866.

DELOS LAKE,
U. S. Attorney.



Filed May 10th, 1866.

GEO. C. GORHAM, *Clerk.*
By DANIEL F. SULLIVAN, *Deputy.*

3 Circuit Court of the United States, tenth circuit, northern district of California.

THE UNITED STATES OF AMERICA,
vs.
CHARLES HARE, S. W. HALLIDAY and George F. Sharp.

Now come the defendants in the above-entitled cause, by Porter & Halladay, their attorneys, and for answer to plaintiff's complaint herein, deny each and every, all and singular, the allegations in said complaint contained.

Defendants deny that plaintiffs were on the 1st day of May, 1865, or at any other time, seized of an estate in fee, or otherwise, in or to the land described in the complaint, or any part thereof.

Defendants deny that plaintiffs are or ever were seized of an estate in fee of the land described in the complaint, or any part thereof.

Defendants deny that they or either of them ever ousted plaintiffs from said land, or any part thereof.

Defendants admit they are in possession of said land, but they deny that they wrongfully or unlawfully withhold the possession of the same or any part thereof from plantiffs.

And further answering these defendants say, that the plantiffs ought not to have or maintain their said action against these defendants or either of them, for they say, that neither the plaintiffs,
4 their predecessors in interest, or grantors, nor either of them, was or has been seized or possessed of the demanded premises or any part thereof within ten years before the commencement of this action.

And these defendants aver, that they and those under and through whom they claim title and possession of the demanded premises, are and have been continuously, for the last ten years prior to the commencement of this action, in the actual possession of the demanded premises, and every part thereof, claiming and holding the same in their own right adversely to the plaintiffs, and all others under and through whom they claim possession thereof, on title thereto.

Wherefore defendants pray for judgment that the complaint be dismissed with costs.

PORTER & HALLADAY,
Att'ys for Defendants.

Service of a copy of the within answer is hereby admitted, and it is hereby consented that the defendants may file an amended answer herein in case they shall desire at any time before the trial of said cause.

May 30, 1866.

DELOS LAKE.
U. S. Att'y.

Filed May 30th, 1866.

GEO. C. GORHAM, *Clerk.*
By S. NEALL. *Dep. Clerk.*

5 Circuit Court of the United States for California.

THE UNITED STATES
vs
CHARLES HARE and others.

It is hereby agreed and stipulated that a jury be waived herein.
July 15, 1867.

PORTER & HALLADAY,
Att'ys for Defendant.
DELOS LAKE,
Att'y for Pl'ff.

Filed 15th July, 1857.

GEO. C. GORHAM, *Cl'k.*
By GEO. E. WHITNEY, *Dep. C'lk.*

United States Circuit Court, district of California.

THE UNITED STATES
vs.
CHARLES HARE *et als.*

It is hereby stipulated and agreed that a jury be, and the same is hereby, waived in the above-entitled action, and that the cause be tried by the court without a jury.
July 29th, 1867.

DELOS LAKE,
Att'y for Pl'ffs.
S. W. HALLADAY.

Filed July 29th, 1867.

GEO. C. GORHAM, *Cl'k.*
Pr. H. F. LARDNER, *Dep'ty.*

6 In the Circuit Court of the United States in and for the district of California.

THE UNITED STATES, plaintiff,
vs.
CHARLES HARE, SAMUEL W. HALLADAY, and GEORGE SHARP, defendants. } Findings.

This cause came on regularly for trial before the court, without a jury, on the 12th day of August, A. D. 1867, when Nathaniel Bennett, esq., appeared as counsel for the United States, plaintiff, and Samuel W. Halladay, esq., appeared as counsel for Charles Hare, S. W. Halladay, and George F. Sharp, the defendants herein, a stipulation in writing, signed by the counsel for the respective parties having been filed in the cause, whereby and wherein a trial by jury was expressly waived. The parties having respectively introduced their evidence, oral, and documentary, and the counsel

having argued and submitted said cause for consideration and decision, and the court having duly considered the premises, now hereby decides, and finds the following as the facts and the law herein.

First. That on the 10th day of March, A. D. 1847, Brigadier General S. W. Kearney, of the United States Army, then acting Military Governor of the then newly acquired Territory of California, issued a certain grant or order, which Exhibit No. 1, hereto attached, is a copy.

7 Second. That on the 23d of June, A. D. 1847, by order of Colonel Mason, Major Hardie was directed to take action with reference to certain reservations at San Francisco, of which order, Exhibit No. 2, hereto attached, is a copy.

Third. That on the 18th day of July, A. D. 1847, Major James A. Hardie addressed a communication to the alcalde of San Francisco, of which Exhibit No. 3, hereto attached is a copy.

Fourth. That on the 30th day of September, A. D. 1847, Colonel R. B. Mason, U. S. army, addressed to George Hyde, esq., then alcalde of San Francisco, a communication, in writing, requesting him not to grant or give any deeds for any town lot at Rincon Point, of which Exhibit No. 4, hereto attached, is a copy.

Fifth. That on the 9th day of August, A. D. 1849, Edward R. S. Canby, assistant adjutant general U. S. army, addressed a communication of that date to Captain E. D. Keyes, 3d artillery, U. S. army, of which Exhibit No. 5, hereto attached, is a copy.

Sixth. That on the 23d day of August, A. D. 1849, said Edward R. S. Canby addressed another communication of that date, to said Captain E. D. Keyes, of which Exhibit No. 6, hereto attached, is a copy.

Seventh. That on the 27th day of November, A. D. 1849, Captain E. D. Keyes, U. S. army, assuming to act for and on behalf of the United States executed and delivered to Theodore Shillaber, a lease of the land therein described, including the demanded

8 premises, and therein called government reserve, for a term of ten years from the date thereof, of which lease, Exhibit No. 7, hereto attached is a copy.

That in the month of April, A. D. 1851, Alexander H. H. Stewart, then Secretary of the Interior, endorsed his approval on said lease to Theodore Shillaber, a copy of which approval is correctly represented on said Exhibit No. 7, hereto attached.

Eighth. That on the 26th day of February, A. D. 1850, said Theodore Shillabar, addressed a letter of that date to Capt. E. D. Keyes, of which Exhibit No. 8, hereto attached, is a copy.

Ninth. That on the 28th day of February, A. D. 1850, Capt. E. D. Keyes addressed a letter of that date to Major E. R. S. Canby, of which Exhibit No. 9, hereto attached, is a copy.

Tenth. That on the 12th day of March, A. D. 1850, in reply to the letter last mentioned, J. Hamilton, 2d lieut. 3d artillery, A. A. A. Gen'l, addressed a letter to Capt. Keyes, of which Exhibit No. 10, hereto attached is a copy.

Eleventh. That on the 28th day of September, A. D. 1850,

Horace Hawes, then an attorney at law, acting for said Theodore Shillaber, published a notice, of which Exhibit No. 11, hereto attached, is a copy, and at the request of said Shillaber, the officers of the United States army, stationed at San Francisco, caused the squatters to be removed and ejected from the said leased premises.

Twelfth. That on the 6th day of June, A. D. 1851, Allen A. Hall and Thomas Butler King, commissioners for the construction of public buildings, addressed a letter to Theodore Shillaber, the
9 said lessee, on the subject of selecting Rincon Point for a marine hospital, of which letter, Exhibit No. 12, hereto attached, is a copy.

Thirteenth. That on the 10th day of June, A. D. 1852, Captain J. L. Folsom, assistant quartermaster, addressed a letter to Major Cross, quartermaster of the United States army, of which letter, Exhibit No. 13, hereto attached, is a copy.

Fourteenth. That on the 15th day of December, A. D. 1852, C. J. Brenham, then mayor of the city of San Francisco, acting under, and in pursuance of ordinance, No. 280, of said city; which ordinance is recited in said deed, and acting for, and in behalf of, said city, acknowledged and delivered to the United States, plaintiff herein, a deed of conveyance of the property described in the complaint, being the premises demanded in this action, and other property therein described, which deed was duly recorded in the office of the county recorder of the county of Francisco, wherein said land is situated, December 14th, 1852, in Liber 19 of Deeds, page 101, of which deed, together with the certificates of acknowledgment, and record thereof and thereon, is endorsed. Exhibit No. 14, hereto attached, is a copy thereof.

Fifteenth. That said deed, last named, embraces in its description the demanded premises; that it was after the execution and delivery of said deed of the city of San Francisco, that the officers and contractors engaged and acting under the plaintiffs, entered upon four, namely, numbers one (1,) two (2,) three (3,) and four (4,) of the six lots contained in said deed, and erected the present United States marine hos-
10 pital at Rincon Point and buildings connected therewith; that the block bounded by Harrison and Folsom, Main and Spear streets, in said city of San Francisco, embraces an area of six lots, each of fifty varas; that is of one hundred and thirty-seven and a half feet, (137½) ft. square; that said four lots namely, Nos. one (1,) two (2,) three (3,) and four (4,) are entirely above high-water mark, and the southerly half of lot No. 5, and the southerly two-thirds of lot No. 6, being above high-water mark of the bay of San Francisco, and the remainder of said lots, Nos. 5 and 6, being below the natural high-water mark of said bay; that the whole of said six lots are contained within what is designated, in said exhibits, as the government reserve at Rincon Point.

Sixteenth. That on the 6th day of November, A. D. 1850, the President of the United States made an order on the subject of government reservations in and near San Franciso, whereby he made seven distinct reservations, as follows:

1st. The reservation now known as the reservation at Fort Point and the Presidio.

2d. Sanceleto on the northern side of the bay.

3d. Goat island, also called Yerba Buena island.

4th. Alcatraz island.

5th. Angel island.

6th. Mare island.

7th. Land on the eastern side of Mare island strait.

Seventeenth. That on the 2d day of July, A. D. 1852, the city of San Francisco presented a petition to the Board of Land Com-
11 missioners organized under the act of Congress of March 3d, 1851, entitled "An act to expedite the settlement of land titles in the State of California," for the confirmation of a claim asserted by said city, to four square leagues of land, under the laws of Mexico; that said claim was recognized and confirmed by said board to a portion of said land, which portion included the premises in controversy; that from the decision of the said board the case was taken by appeal to the District Court of the United States for the northern district of California, and from thence was transferred, pursuant to the act of Congress on that subject, to this court, wherein, after due proceedings had, it was, by the consideration of this court, on the 18th day of May, A. D. 1865, finally adjudged that said claim of said city of San Francisco to four square leagues of land was valid, subject to certain exceptions, and confirmed.

The following is a copy of said decree:

THE CITY OF SAN FRANCISCO,
vs.
THE UNITED STATES.

The appeal in this case taken by the petitioner, the city of San Francisco, from the decree of the board of land commissioners, to ascertain and settle private land claims in the State of California, entered on the twenty-first day of December, 1854, by which the claim of the petitioner was adjudged to be valid, and confirmed to lands within certain described limits, coming on to be heard
12 upon the transcript of proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and further evidence taken in the District Court of the United States for the northern district of California, pending said appeal, the said case having been transferred to this court, by order of the said District Court, under the provisions of section four of this act entitled "An act to expedite the settlement of titles to land in the State of California," approved July 1st, 1864; and counsel of the United States and for the petitioner having been heard, and due deliberation had, it is ordered, adjudged and decreed, that the claim of the petitioner, the city of San Francisco, to the land hereinafter described, is valid, and that the same be confirmed.

The land of which confirmation is made, is a tract situated within

the county of San Francisco, and embracing so much of the extreme upper portion of the Peninsula above ordinary high water mark, (as the same existed at the date of the conquest of the country, namely, the seventh of July, A. D., 1846), on which the city of San Francisco is situated, as will contain an area of four square leagues; said tract being bounded on the north and east by the bay of San Francisco; on the west by the Pacific ocean, and on the south by a due
13 east and west line, drawn so as to include the area aforesaid, subject to the following deductions, namely: such parcels of land as have been heretofore reserved or dedicated to public uses by the United States; and also, such parcels of land as have been, by grants from lawful authority, vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder, by said tribunals, in proceedings now pending therein for that purpose, all of which said excepted parcels of land are included within the area of four square leagues above-mentioned, but are excluded from the confirmation to the city. This confirmation is in trust for the benefit of the lot holders under grants from the pueblo, town or city of San Francisco, or other competent authority, and as to any residue, in trust for the use and benefit of the inhabitants of the city.

SAN FRANCISCO, *May* 18*th*, 1865.

FIELD,
Circuit Judge.

Appeals taken by the United States and by the city of San Francisco from said decree, to the Supreme Court, were dismissed at the December Term, 1866.

The demanded premises are within the extreme limits of
14 the four square leagues confirmed by said decree.

Eighteenth: That in the month of December, A. D., 1849, one J. Q. Colton, an acting justice of the peace in San Francisco, under appointment of the prefect of the district including San Francisco, claimed and exercised the right of granting lots of the municipal lands of San Francisco to such of the inhabitants who should petition him for the same. That the grantors of the defendants herein, petitioned said justice of the peace, and obtained grants issued to them of lots numbers five (5) and six (6), the demanded premises in this action, which grants purported to pass the title of said lots to said grantors respectively. That said grantors respectively entered upon the premises, claiming under their said grant, in the spring of 1850, claiming said land as their own, and they and their vendors successively, down to and including defendants, have been in the possession of the demanded premises.

Nineteenth. That in the month of May, A. D., 1851, Samuel A. Morrison recovered a final judgment against the city of San Francisco, in the District Court of the fourth judicial district in and for the city of San Francisco, for the sum of $2,477 42 and costs. That in

August, 1851, an execution was issued on said judgment under
15 and by virtue of which the sheriff of said city and county seized and sold the demanded premises at public auction, to the defendant's grantors, and executed, acknowledged and delivered regular sheriff's deeds therefor to said purchasers, they being the highest bidders therefor.

Twentieth. That on the 24th day of May, 1851, under and by virtue of the authority and by direction of the act of the legislature of the State of California, entitled "An act to authorize the funding of the floating debt of the city of San Francisco," approved May 1st, 1851, and in pursuance of the directions of said act, the commissioners of the sinking fund mentioned therein, executed a deed to the commissioners of the funded debt of the city of San Francisco, created and appointed by said act, of certain land and lots, including the land in dispute, all of which had previously been deeded by the city of San Francisco to said commissioners of the sinking fund, under certain ordinances of said city, directing the same to be done, by which deed of May 24th, 1851, the commissioners of the funded debt became seized of all the right, title, and interest which the city of San Francisco possessed in and to the land so conveyed to them, including the demanded premises.

16 Twenty-first. That in the month of June, A. D. 1855, the city of San Francisco passed an ordinance, numbered 822, for the settlement and quieting of land titles in the city of San Francisco, commonly known as the Van Ness ordinance, whereby said city did grant all its right and claim to the lands within its corporate limits to the parties in the actual possession thereof, by themselves or tenants, on or before the first day of January, A. D. 1855, (with certain exceptions, which excepted parcels do not include or refer to the premises in dispute,) with the proviso in the grant in said ordinance that such actual possession should have been continued from said first day of January down to the twentieth day of June, 1855. That on the 27th day of September, 1855, said city passed another ordinance, wherein and whereby said ordinance No. 822 was "re-ordained, ratified, and confirmed in all its parts." That on the eleventh day of March, A. D. 1858, the legislature of the State of California passed an act, entitled "An act concerning the city of San Francisco, and to ratify and confirm certain ordinances of the common council of said city," which act ratified and confirmed the ordinances last mentioned.

17 Twenty-second. That on the 14th day of April, A. D. 1862, an act of the legislature of the State of California was passed, entitled "An act to authorize the commissioners of the funded debt of the city of San Francisco to compromise and settle certain claims to real estate, and to convey such real estate pursuant thereto," whereby said commmissioners were authorized to compromise with and convey to the said parties in the possession the title held by the said commissioners; that the defendants were in the actual possession as purchasers of the demanded premises, according to the requirements of said act; that upon the claim and petition of the

defendants, the commissioners adjudged the claims of defendants to be well founded according to the provisions of said act, and thereupon awarded grants of the demanded premises to the defendants respectively, so petitioned for by them; and thereupon they published a notice of their said award, as prescribed by said act, and afterwards, upon proof of the due publication of said award, and on payment of the consideration required by said commissioners, they executed and delivered to the defendants respectively, deeds of conveyance of the two lots, numbers five (5) and six (6,) composing the demanded premises, which deeds were duly acknowledged and
18 recorded prior to the commencement of this suit.

Twenty-third. That under and by virtue of said deeds mentioned in the last finding, all the right, title, and interest, legal and equitable, of said city, in and to the demanded premises, passed to and became vested in the defendants respectively.

Conclusions of law.

As conclusions of law from the foregoing facts, it is now hereby found and decided as follows :

First. That the attempted reservation for public purposes of the tract of land in San Francisco, known as Rincon Point, by officers of the army of the United States, during the military occupation of the country, was ineffectual and void.

Second. That no dedication to public uses of any portion of the tract known as Rincon point, at San Francisco, was ever made by the United States, except of the four lots embraced in the deed of the city of San Francisco, to them, and which are designated as lots, numbers one (1,) two (2,) three (3,) and four (4,) of the block described in said deed; that these four lots were dedicated by
19 the United States to public uses after the acceptance of said deed, by their occupation of the lots, and erection thereon of the marine hospital and buildings connected therewith; and that these four lots are embraced within the parcels excepted from the confirmation of the city in the decree of the Circuit Court of the United States of May 18, 1865, and that no other part or parcel of the tract known as Rincon point, is thus excepted.

Third. That at the time of the commencement of this action, the plaintiffs had no title to the demanded premises nor were they entitled to the possession thereof.

Fourth. That at the commencement of this suit the defendants were in the actual possession of the demanded premises with the legal title thereto and they are still entitled to the possession thereof.

Judgment will therefore be entered for the defendants.

October 28th, 1867.

FIELD J.

20 *Exhibit No.* 1.

I, Brigadier General S. W. Kearney, Governor of California, by virtue of authority in me vested by the President of the United

States of America, do hereby grant, convey, and release unto the town of San Francisco, the people or corporate authorities thereof, all the right title and interest of the government of the United States and of the territory of California in and to the beach and water lots on the east front of said town of San Francisco, including between the points known as the Rincon and Fort Montgomery, excepting such lots as may be selected for the use of the general government by the senior officers of the army and navy now there; provided the said ground hereby ceded shall be divided into lots and sold to the highest bidders, after three months notice previously given. The proceeds of said sale to be for the benefit of the town of San Francisco. Given at Monterey, capital of California, this 10th day of March 1847, and in the 71st year of the independence of the United States.

S. W. KEARNEY,
Brig. Gen'l and Governor of California.

21 *Exhibit No.* 2.

HEADQUARTERS 10th MILITARY DEPARTMENT,
MONTEREY, CALIFORNIA, *June 23d*, 1847.

SIR: Colonel Mason has not yet officially learned that any selections have been made of lots in the town of San Francisco, known as the beach and water lots granted to said town for sale, excepting such as should be selected for the use of the general government by the senior officer of the army or navy.

The time of sale under the decree of General Kearney of March 10th 1847, rendered it necessary that the selection be made soon, and Colonel Mason wishes you to consult with Commmander Biddle, or other senior naval officers that may be on the station and to select in accordance with the terms of the grant, if it has not already been done, the lots best suited for wharves both for army and navy purposes with space enough for all the buildings that it may be necessary to erect hereafter. A suitable lot should also be selected for a custom-house with the storehouses that it may require.

Colonel Mason wishes these selections to be made so far as the army is concerned, and officially communicated to the alcalde
22 of the town before the day of sale.

I have the honor to be your most obt, serv't

W. T. SHERMAN,
1st Lt. 3 Art'y, A. A. A. Gen'l.

Major JAMES A. HARDIE,
Com'd in San Francisco.

Exhibit No. 3.

HEADQUARTERS NOR. MIL. DEPARTMENT,
SAN FRANCISCO CALIFORNIA, *July 18th*, 1847.

SIR: In obedience to orders from his excellency the governor, Col. R. B. Mason, I have the honor to inform you that I have selected for

the use of the government the following lands in the town of San Francisco, all that portion of Rincon Point not divided off into lots and marked "Government Reserve" upon the map entitled "Map of of the beach and water lots of San Francisco, A. D. 1847," now in the alcalde's office of San Francisco. Also all the beach and water lots bounded by streets entitled Montgomery, Washington, and
23 Jackson streets, on a map entitled "Map of San Francisco" now in the alcalde's office, and the bay running out into deep water and marked on the aforesaid map of beach and water lots "Government Reserve." And also all the beach and water lots bounded by streets entitled Sansome, Broadway, and Pacific streets on the aforesaid map of San Francisco, and the bay running out into deep water and marked "Government Reserve" on the aforesaid map of beach and water lots of the town of San Francisco.

I am sir, very respectfully your obd't serv't

(Signed) JAS. A. HARDIE,
Major 1st N. Y. Reg't Volls.

To Alcalde of the town of San Francisco, Cal'a.

Exhibit No. 4.

HEADQUARTERS, 10TH MIL'Y DEP'T,
SAN FRANCISCO, CAL'A, *Sept. 30th*, 1847.

SIR: You will be pleased neither to grant nor to give any deed for any town lots or other land to the southward of the Rincon Point and eastward of a line commencing at the northwest corner of the government reserve, at the said Rincon Point, and running
24 south eleven degrees west (S. 11 W.,) with the true meridian. The land eastward of the above-named line is intended for the use of the United States government, the southern boundary of which will be more particularly described when the town surveys are more fully completed.

I have the honor to be your obd't serv't,

(Sig'd) R. B. MASON,
Col. 1st Dragoons, Gov. of California.

To GEORGE HYDE, Esq.,
Alcalde of San Francisco.

Exhibit No. 5.

HEADQ'RS 10 MIL. DEP'T,
MONTEREY, CAL., *Aug. 9th*, 1849.

CAPTAIN: I am instructed by the Commanding General to say that you will cause the government reserves at San Francisco to be properly marked and notice to be given in one or more of the papers published in that town forbidding trespassers, by the erection of buildings, or in any other manner whatsoever.

Mr. Thompson and Mr. Steinberger are the only persons authorized to occupy any portion of these lands, and without author-

25 ity communicated to you through or from Department Headquarters, you will permit no one else to occupy them.

Very respectfully, your obedient servant,

ED. R. S. CANBY,
Ass't Ad'j't Gen'l.

Capt. E. D. KEYS,
3d Artillery, San Francisco.

Exhibit No. 6.

HEADQUARTERS, 10 MIL. DEP'T,
MONTEREY, *Aug.* 23*d*, 1849.

CAPTAIN: Your communication of the 17th inst., and its enclosures, were received last night, and I am directed by the Commanding General to say that his instructions to you of the 9th inst., were not more definite because the papers in relation to the claim of Mr. Thompson, and the permission given Mr. Steinberger to occupy a portion of the reserve, are, or should be on file at your post, or in the Ass't Quartermaster's office of San Francisco.

By the decisions of Generals Mason and Riley, the former and present governors of California, "occupancy of the house," commonly known as the "Kanacka House," and "a right of
26 way to the beach," has been, under certain restrictions, has been guaranteed Mr. Thompson, until "his claim be submitted to the U. S. government, or decided by the proper tribunals." Beyond this his title has not been and will not be recognized, and you are desired to apply to Mr. Billings, Attorney General for California, for any assistance that may be deemed necessary to protect the right of the United States to this property.

The reservation at Rincon Point, and any other public lands that there may be at San Francisco, are included in your instructions of the 9th inst.

Very respectfully, your ob'd't serv't,

ED. R. S. CANBY,
Ass't Adj't Gen'l.

Capt. E. D. KEYES,
3d Art'y, Commd'g Residio, San Francisco.

Exhibit No. 7.

Government Reserve, by Capt. E. D. Keyes, U. S. A., to Theodore Shillaber:

This indenture, made this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine,
27 between Captain E. D. Keyes, U. S. Army, commanding at San Francisco, Upper California, and Theodore Shillaber, of the same place, witnesseth, that the said E. D. Keyes, as agent of the United States, by and with the authority of Brevet Brigadier General Bennett Riley, U. S. Army, commanding the 10th Military Department, doth hereby lease, demise, and to let to the said Theo-

dore Shillaber, his heirs and assigns, all those lots, parcels, and blocks of ground in the town of San Francisco, Upper California, which have hitherto been set apart indicated or known as "Government Reserve," and which are embraced, 1st, by Montgomery street on the west; Jackson street on the north; Washington street on the south; and the limits of the town or deep water on the east; and 2d, by what is commonly known and indicated on the map of said town as "Rincon Point;" the second piece or parcel of ground embracing all that has been heretofore been set apart as government reserve on "Rincon Point" and its immediate neighborhood. To hold for the term of ten years from the twenty-seventh day of November, A. D. one thousand eight hundred and forty-nine, subject to the following conditions and exceptions, to wit:

1st. The said lessee yielding and paying to the officer of the Quartermaster Department on duty at San Francisco or to such other
28 persons as may be duly appointed to receive it for the benefit of the United States the sum of two thousand dollars for each and every year.

2nd. To acquire for and surrender to the United States at the expiration of this lease, all titles or claims belonging to or held by other persons, and all persons in and to the whole or any part of said premises.

3. To pay all taxes and assessments which may be laid on the premises, or any portion or portions of them, after they shall come into the possession of the said lessee by the proper authorities.

4. After the expiration of five years from the said twenty-seventh day of November, to surrender to the United States such a portion or portions of the premises as may be required for the actual uses of the government, and which may be called for by the proper authorities, it being understood that in case such claim should extend to portions of the premises upon which large amounts of moneys shall have been expended in permanent improvements, that the said lessee shall be allowed a fair compensation for such improvements, to be determined by three disinterested men impartially selected according to usual forms, and for such claims are made for the purposes specified in the article, the said lessee to have quiet and peaceable
29 possession for the whole ten years aforesaid.

5. In case the United States shall claim and appropriate any portion or portions of the premises before the expiration of the term of this lease, then, in such case, the said lessee shall be allowed not less than ninety days to remove the buildings thereupon, or the United States government may, at its option, purchase the same upon the valuation of three men selected as aforesaid, and the same conditions respecting the removal or purchase of the buildings shall hold at the termination of this lease.

6. The said Shillaber agrees honestly and faithfully to defend and protect the interests and rights of the United States in and to all and every part of the lands embraced in this indenture, but if it shall be decided by the proper tribunals that any other person or persons possess a valid and bona fide title to any portion or portions of them,

and if such person or persons shall have or shall obtain legal possession thereof, then, in such case, the portion or portions so claimed and obtained shall be considered as not embraced in this indenture, or lease, this indenture holding good with all the conditions and exceptions to all other parts and portions of the premises herein described.

7. In default of the payment by the said lessee within the year for which it is due of the two thousand dollars aforesaid, this lease
30 to become null and void, and the said lessee to surrender the premises to the United States.

8. At the expiration of the ten years aforesaid the said Shillaber agrees to surrender the whole premises peaceably to the United States. It being understsood that should the lessee be required to surrender any portion or portions to them before the expiration of ten years that a fair correspondent dimunition of the rental of $2,000 is to be allowed to him.

9. The said Shillaber agrees not to allow any person whatsoever to participate in the uses or profits of the premises herein described, who does not fully and without reservation or predisposition of his claim subscribe to all the conditions of this lease.

In witness whereof, the said parties to this indenture have hereunto set their hands and seals the day and year first above written.

THEO. SHILLABER, [SEAL.]
E. D. KEYES, [SEAL.]
Capt. 3d Art'y, Commanding at San Francisco.

Executed in presence of—
ROBERT R. PIERPONT.
THOS. I. PEACHY.

Additional article.

It is understood that at the termination of this lease, the said Shillaber is not to claim, nor are those holding under him to claim any compensation for any excavations or embankment made upon such portions of the premises, as he may hold during the whole ten
31 years.

THEO. SHILLABER. [L. S.]
E. D. KEYES, [L. S.]
Capt. 3d Art'y, Commanding at San Francisco.

Witnesses: ROBERT R. PIERPONT.
THOS. I. PEACHY.

TERRITORY OF CALIFORNIA,
District of San Francisco, ss:

Before me, first alcalde of said district, personally appeared the within named E. D. Keyes and Theodore Shillaber, who acknowl-

edged the within instrument to be their voluntary act and deed for the purposes therein mentioned.

Given under my hand this 29th Nov. A. D. 1849.

JNO. W. GEARY,
First Alcalde.

Approved:

B. RILEY,
Bt. Brigadier General U. S. A., Com'd the Dep't.

HEADQUAR. MIL. DEPART.,
SAN JOSE, CAL'A, *Dec.* 20, '49.

A true copy of the original lease recorded December 28th, A. D. 1849, at 1¼ o'clock p. m.

ARD. REYNOLDS,
Recording Clerk.

Having examined the above lease and being satisfied that it is to the interest of the United States to place the property herein
32 demised in the possession and under the legal control of those whose interest and duty it will be to protect the property from squatters and adverse claimants, I hereby ratify and confirm the same on the part of the United States.

ALEX. H. H. STUART,
Secretary of Interior.

Exhibit No. 8.

SAN FRANCISCO, 26*th February*, 1850.

Captain E. D. KEYES, U. S. A.,
Captain Commanding at San Francisco.

SIR: As the lessee of the government reserve on Rincon Point from you in your official capacity, which lease has been approved by your superior officer Gen'l Riley, I have to request that you will maintain me in possession of the rights which I have to said reserve in virtue of the title derived from you, and that you will assist me in maintaining inviolate the claim of the United States thereto.

I therefore desire that you will take such measures as may appear to you most proper to eject from said "reserve" all such persons now residing thereon as are there without my consent. My
33 own endeavors to establish possession thereon have been rendered futile by the refusal and threats of the squatters now occupying it.

I am sir, your most ob't serv't,

THEO. SHILLABER.

Exhibit No. 9.

PRESIDIO OF SAN FRANCISCO,
Feb'y 28*th*, 1850.

Major E. R. S. CANBY, *Ass't Adj't Gen'l.*

SIR: Having been notified by Mr. Shillaber yesterday that he could not get possession of the reserve at Rincon Point, which was leased

to him in November last, I immediately repaired to that place and notified the squatters that they must leave in twenty-four hours. Some promised to go, and others refused; to-day at one o'clock p. m., I marched to Rincon Point with all my disposable force, and was obliged to order the pulling down of two tents and two sheds claimed by a man named White. The structures were removed without unnecessary violence, and no injury was done to his goods. Most of the other squatters promised to remove peaceably and no other use of force was made. Immediately on my return to San
34 Francisco, I was summoned by the judge of first instance, Judge Almon, to appear in his court. I appeared accordingly, and after hearing the case was discharged. White is an Englishman by birth, and I feel convinced he has backers whose design it is to get the reservations annulled and to set at naught all the proceedings of officers of the army in reference to them.

Unless those reservations are maintained, I do not see how officers can maintain themselves at their posts, whenever it shall appear to be the interest of citizens to dispossess them. The case appears to me to be a difficult one under present circumstances, and I trust it may be urged to a settlement at Washington by General Riley. Judge Almon refused to grant an injunction to stay my proceedings, but still I am not determined whether to go on and force others off or not. I therefore take the liberty to ask for further instructions. Under the circumstances of my position, I deem it proper to request the withdrawal of the tender of my resignation. A letter to that effect will accompany this.

I have the honor to be sir, your most obed't serv't,

E. D. KEYES,
Capt. 3d Art'y Com'g Post.

35 *Exhibit No* 10.

HEADQUARTERS, 10 MIL'Y DEP'T,
MONTEREY, CALA., *March 12th*, 1850.

Capt. KEYS:

SIR: Your letter of date Feb'y 28th last has been received, and laid before the Commanding General, who directs me to say: that your course, in ejecting of the intruders on the government lands, was correct; that this matter has been several times reported at Washington for the action of the War Department, and that until that action be known you will continue to preserve the Public Reserve from private occupation; that your letter recalling the tender of your resignation, has been forwarded with his approval.

I am sir, very respectfully,

J. HAMILTON,
2nd Lt. 3 Art'y, A.A. A. Gen'l.

To Capt. E. D. KEYS, *3d Art'y, Presidio of San Francisco.*

Exhibit No 11.

Caution to Purchasers.

The public are notified that neither Crane & Rice, nor any
36 other persons are authorized to sell any houses, buildings or lots on "Rincon Point," or to occupy any point of said land, without permission from Theodore Shillaber, to whom the exclusive possession of the same legally belongs.

SAN FRANCISCO, *Sept.* 28*th*, 1850.

HORACE HAWES,
Attorney for Theodore Shillaber.

The land above mentioned is included between Folsom street, Beale street, and the Bay of San Francisco.

HORACE HAWES.

Exhibit No 12.

SAN FRANCISCO, *June* 6, 1851.

SIR: The undersigned having been appointed by the Secretary of the Treasury, Commissioner to superintend the construction of a custom-house and marine hospital, in San Francisco, have, under instructions from that Department, selected Rincon Point as a suitable site for a marine hospital, we have examined the indenture by which that point, together with another portion of what is known in this city as the "Government Reserves," was leased to you, on the 29th November, 1849, by Captain E. D. Keyes, for the period of
37 ten years, and without expressing any opinion, or meaning to be understood as indicating an opinion with regard to the validity of said lease, we are clearly of opinion, that the United States have, by the express terms thereof, the unquestionable right to take possession and use, and occupy, at any time, any portion or portions thereof, for government purposes, the lessee to be allowed the term of ninety days for removing any buildings which may have been placed thereon.

We, therefore, beg respectfully to inquire whether this be your understanding of the true intent and meaning of said indenture, and whether, if this be not your understanding, it is your intention to control the right of the government to take possession and use, and occupy said Point for the purpose above indicated; the said term of ninety days being allowed for the removing any buildings which may have been erected on the premises.

Very respectfully, your obedient servant.

ALLEN A. HALL,
J. BUTLER KING,
Commissioners for construction of Public Buildings.

Captain THEODORE SHILLABER.

38 *Exhibit No* 13.

SAN FRANCISCO, *California, June, 10th,* 1852.

To Major O. CROSS, *Quartermaster U. S. Army.*

SIR: Your letter of the 2d June is before me. In reply to your questions, I have to state that:

1st. The reserve made particularly for military purposes, such as warehouses, &c., is that at Clark's Point, between Pacific street and Broadway, and comprises all that portion East of Sansome street, out to Ship's Channel, with the exception of fifty vara lot No. 318, on the S. E. corner of Sansome street and Broadway, which was sold by the city authorities, before the reservation was made.

2d. The lots East of Montgomery street, and between Washington and Jackson streets, out to Ship's Channel. These were reserved for the custom-house or revenue purposes.

3d. The lots on Rincon Point, East of Beal street. These were reserved for military purposes, or for hospital or other government works.

4th. The authority under which these reservations were
39 made, was that of General Kearney, while in command in this country, in the spring of 1847. Gen'l Kearney authorized the sale of the property commonly known as "Beach and Water lots" or the flats in front of this city, by the authorities of the town, and directed the principal military and naval authorities here to reserve from that sale all such lots and locations as they thought might be required for government purposes.

In accordance therewith, the late Commodore Biddle, U. S. Navy, Major J. K. Hardie, 1st reg't N. Y. volunteers and myself, made the reservations heretofore described.

5th. The property known as government reserves is now held, I believe, by Messrs. Palmer, Cook, & Co., on lease for eight years. The leases were given by Capt. E. D. Keyes, U. S. Army, to Theodore Shillaber, and Messrs. Palmer, Cook & Co., hold as Shillaber's assignees. Much of the property is held by title in conflict with those of Messrs. Palmer, Cook & Co., some of them are squatters' claims, and some pretended grants.

I think there are no genuine grants to any portion of the original reserves as made by the officers above named, in 1847. It was an object to get reserves far from claims of every kind.

6th. I believe the property described above to be worth $750,000.

40 7th. I do not know the term of leases to Messrs. Palmer, Cook & Co., but I am informed that they have never paid anything for the use of the property they hold.

I am, sir, respectfully your obd't serv't,

J. L. FOLSOM,
A. Qr. M'tr.

Exhibit No. 14.

Whereas by ordinance No. 280, of the Common Council of the city of San Francisco, it was ordained as follows:

"The people of the city of San Francisco do ordain as follows:

"That his honor, the Mayor, be directed to convey on their behalf to the United States, all their right, title and interest, in and to certain six fifty vara lots, bounded and described as follows: On the east by Spear street; on the south by Harrison street; on the west by Front street; and on the north by the beach, the whole comprehended within an area of one hundred varas by one hundred and fifty varas."

Now, therefore, this deed, made and entered into this 11th day of December, eighteen hundred and fifty-two, by and between the city of San Francisco by Charles J. Brenham, the Mayor thereof,
41 party of the first part, and the United States of America, party of the second part, witnesseth, that for and in consideration of the premises, and of the sum of one dollar to the party of the first part in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said party of the first part doth by these presents grant, convey, and quit claim unto the said party of the second part, all the right, title, interest, claim and demand, legal or equitable in possession, remainder, or reversion, of the said party of the first part in and to the premises aforesaid, and every part thereof, which premises are situated and being within the corporate limits of said city, and are bounded and described as set forth in said ordinance. To have and to hold the said premises with all the privileges and appurtenances thereunto belonging, unto the said party of the second part forever.

In witness whereof, the said Charles J. Brenham, mayor of said city, hath hereunto set his hand and caused the official seal of said city to be hereunto affixed, the day and year aforesaid.

[SEAL] C. J. BRENHAM, *Mayor.*

42 I hereby certify that the copy of ordinance No. 280, included within the foregoing deed is a true copy of an original ordinance returned by the mayor to the Common Council with his approval, December 10th, 1852.

SAN FRANCISCO, *Dec. 13th*, 1852.

EDWARD TOBY,
Clerk of the Common Council.

STATE OF CALIFORNIA, *County of San Francisco, ss:*

On this 14th day of December, 1852, personally appeared before me, Fred'k A. Sawyer, a notary public for said county, Charles J. Brenham, mayor of the city of San Francisco, and Edward Toby, clerk of the common council of said city, to me known to be the individuals described in and who executed the several instruments above, to which their names are subscribed and acknowledged to me

that they executed the same freely and voluntarily, and for the purpurposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal of office, this day and year last above written.

[SEAL.] F. S. SAWYER, *Not. Pub.*

Recorded in recorder's office of county of San Francisco, Liber 19 of Deeds, page 101, December 14th, 1852, 12 o'c., m.

THOS. B. RUSSUM, *Co. Recorder.*

By per JO. CLEMENT, *Dep'y.*

43 Endorsed: In U. S. Circuit Court. United States *vs.* Charles Hare *et als.* Findings. Filed 28th October, 1867. Geo. E. Whitney, Clerk.

Circuit Court of the United States, in and for the district of California.

THE UNITED STATES, pl'ffs, *vs.* CHARLES HARE *et al.*, def'ts. } Judgment.

On the findings and proofs and pursuant to the findings of facts and law of this case, signed by the judge of this court and filed herein, it is by the consideration of the court now hereby ordered and adjudged that the plaintiffs, the United States, take nothing by their said action against the said defendants, Charles Hare, Samuel W. Halladay and George F. Sharp, or either of them, but that said several defendants and each of them go hence without day.

Judgment entered 28th October, 1867.

Attest: GEO. E. WHITNEY, *Clerk.*

A true copy.

Attest: GEO. E. WHITNEY, *Clerk.*

44 In the Circuit Court of the United States for the district of California.

THE UNITED STATES *vs.* CHARLES HARE & *al.*

UNITED STATES OF AMERICA,
District of California, *ss*:

I, Geo. E. Whitney, Clerk of the Circuit Court of the United States for the district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment record in the above-entitled cause, recorded in Judgment Record Book, Com. Law of said court at page 307.

Witness my hand and the seal of said court the 28th day of October, A. D. 1867.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

Endorsed: Judgment roll. Filed 28th October, 1867.
45 Geo. E. Whitney, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the Circuit Court of the United States for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, between the United States, plaintiff, and Charles Hare, Samuel W. Halladay and George F. Sharp, defendants, a manifest error hath happened, to the great damage of the said United States as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the Capitol, in the city of Washington, on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that
46 error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of May, A. D. 1867, and of the independence of the United States the ninety-first.

[SEAL.] GEORGE E. WHITNEY, *Clerk.*
By SAM'L NEALL, *D. C.*

DELOS LAKE,
Atty. for Pl'ffs in Error.

The above writ of error is hereby allowed.

STEPHEN J. FIELD,
Associate Justice U. S. Sup. Court.

Endorsed: Filed Oct. 31st, 1867. Geo. E. Whitney, Cl'k, p. Wheeler, Dep.

UNITED STATES OF AMERICA, *ss:*

To Charles Hare, Samuel W. Halladay and George F. Sharp, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington
47 on the second day of December, A. D. 1867, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the district of California, wherein the United States are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned

should not be corrected, and speedy justice should not be done to the parties in that behalf.

October 30th, 1867. STEPHEN J. FIELD,
Associate Justice of the U. S. Supreme Court.

Endorsed: Due service admitted. S. W. Halladay, Att'y for Defts. Oct. 31st, 1867. Filed Oct. 31st, 1867. Geo. E. Whitney, Cl'k, p. John O. Wheeler, Dep.

The foregoing pages, one to 47, both inclusive, constitute the return to the annexed writ.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

48 Following is the opinion of the presiding judge rendered upon the decsion of the within case.

GEO. E. WHITNEY,
Clerk, U. S. Circuit Court, Dist. Cal'a.

THE UNITED STATES
vs.
CHARLES HARE, *et al.*

This is an action for the possession of a portion of the fifty-vara lots numbers five and six, in block lying between Folsom and Harrington streets, and between Main and Spear streets, in the city of San Francisco. The demand in the complaint is for the entire lots, but it was admitted on the trial that the title of the plaintiff does not extend to that portion of the lots which lies below the ordinary high-water mark of the bay of San Francisco, as that mark existed on the acquisition of the country.

The claim of the plaintiffs to the upland portion rests upon the hypothesis, that previous to the admission of California into the Union, the premises were reserved for public purposes by the action of officers of the army of the United States, and that such reservation was recognised by the subsequent legislation of Congress, and by the decree of this court in the Pueblo case.

The defendants not only controvert the positions of the plaintiffs, but assert title in themselves, or parties they represent, from three sources: First. By virtue of a grant from a justice of the peace of the city of San Francisco, in January, 1850. Second. By virtue of a deed from the sheriff of the county of San Francisco, bearing date in October, 1851, executed upon a sale of the premises under a judgment and execution against the city; and, third, by virtue of a conveyance by the city through the commissioners of the sinking fund created in 1850, and the commissioners of the funded debt created in 1851.

That a Mexican pueblo existed at the site of the present city of San Francisco upon the acquisition of the country by the United States, on the 7th of July, 1846; that it possessed an interest in lands to the extent of four square leagues measured off from the northern portion of the peninsula upon which the city is situated; and that

the city has succeeded to such interest, are matters no longer open to discussion. They have been settled by judicial decision in a controversy between the city and the United States after the most mature consideration.

It was admitted on the trial that the premises in controversy were within the four square leagues mentioned. They were not, therefore, the subject of levy and sale under judgment and execution against the city. That source of title to the defendants may therefore be laid aside. So the grant of the justice of the peace may also be passed over without consideration, as no authority for the exercise of any power to grant portions of the municipal lands by officers of that description in the pueblo has been furnished us in the laws or customs of the country.

The alleged title of the defendants by conveyance from the city arises in this wise: In August, 1850, the common council of San Francisco passed an ordinance to create a fund for the erection and promotion of city improvements, and provided, in the execution of this purpose, for the issue of city stock to be called a "Sinking Fund Stock." The ordinance appointed a board of five persons, entitled "The Commissioners of the Sinking Fund," and invested them with the charge of all the real estate in the possession of the city, and pledged the property as security for the redemption of the stock and interest at maturity. By a subsequent ordinance the common council directed a conveyance of this property to be made to the commissioners, in trust, for the purposes mentioned; and such conveyance was executed on the 25th of December, 1850. This conveyance includes the premises in controversy, and all the tract known as the government reserve at Rincon Point.

On the 4th of May, 1851, the legislature of the State passed an act "to authorize the funding of the floating debt of the city of San Francisco, and to provide for the payment of the same." The act created a board, called "Commissioners of the Funded Debt of the City of San Francisco," and directed the commissioners of the sinking fund, created as mentioned by the ordinance of the city, to convey to them all the property and rights of property belonging to the city; and empowered them to sell or lease the property at such time and place as in their discretion the interest of the city might require, and to apply the proceeds to the liquidation of its floating debt.

Under this act the commissioners of the sinking fund, on the 17th of May, 1851, executed the conveyance directed, of all the property embraced in the deed which they had received.

Soon after the issue of the grant by the justice of the peace, which we have mentioned, the defendants, or the parties whom they represent, went into possession of the premises, and were in possession when they obtained the conveyance of the sheriff. Under the title thus derived they asserted ownership until the passage of the ordinance of the common council for the settlement of land titles, in June, 1855, known as the Van Ness ordinance, and its confirmation by the legislature in March, 1858, after which they also claimed under the ordinance.

Some conflict thus arose between them and the commissioners of the funded debt. Similar conflicts had also arisen with other parties, claiming under like circumstances against the commissioners. To remove the embarrassment arising from this cause, the legislature, in April, 1862, passed an act authorizing a compromise between parties thus situated and the commissioners; and a conveyance of the title by the latter in such parties. Under this act, and in pursuance of its provisions, a compromise was effected, and conveyances were executed in 1862 and 1863 to the defendants, or the parties represented by them.

No question is raised as to the validity of these conveyances, except that the premises had previously been appropriated for the public purposes of the government. Though it has been held that there was no authority in the common council of the city, under the charter of 1850, to create the board of commissioners of the sinking fund, or to execute a conveyance of the city property to them, yet it has not been doubted that it was competent for the legislature to direct a conveyance of the property by them to the commissioners of the funded debt, or that such conveyance passed the interest of the city. The power of the city to dispose of the property was, after the admission of California into the Union, subject to the control of the legislature of the State. The legislature could restrain or enlarge, at its pleasure, the authority of the agents of the city over the property, and could authorize a transfer of the title through the commissioners of the sinking fund as well as in any other way, or through any other body.—(Payne and Dowey *vs.* Treadwell; 16 Cal., 233, and authorities there cited.)

The real question, therefore, at issue, relates to the efficacy of the acts of the officers of the army of the United States, in creating a reservation of the premises, before the title had thus passed from the city, and the effect upon such acts of the legislation of Congress and the decree in the pueblo case.

In considering the claim of the plaintiffs, we shall assume that, until the action of the city authorities in disposing of the property, the United States retained the same right to reserve for public purposes portions of the pueblo lands to which the city had succeeded as they possessed to reserve portions of the public domain; at least, that they retained such right previous to the admission of California into the Union.

As we have had frequent occasion to observe, it is difficult to state with precision the exact nature of the title or interest which the pueblo possessed in its lands. They were not held in absolute property, with full right of alienation and disposition. They were subject to the control and disposition of the government, until by proceedings of the officers of the pueblo, acting under the regulations established for the disposition of the property, the title passed to private parties. Several grants to individuals within the limits of the four square leagues were made by the governors of the department, some with, and some without, the sanction of, or consultation with, the authorities of the pueblo. The validity of these grants

has been repeatedly recognized by judicial decision. If the governors could thus pass the title to private persons, it would seem to be a reasonable inference, as we said in the case of Grisar *vs.* McDowell, "that they could reserve from the disposition of these authorities such portions of the lands as might be required by the government for public purposes." This right of control and disposition, which existed with the former government, passed upon the cession of the country, with all other public rights, to the United States, and could afterwards be exercised by them at any time before the property had passed to third parties, by the action of the authorities of the pueblo in accordance with existing law.

The various acts of the officers of the army of the United States, upon which the asserted reservation is based, can be briefly stated.

On the [the] tenth of March, 1847, whilst California was in possession of the military forces of the United States, Brigadier General S. W. Kearney, then acting as military governor of the country, issued a document purporting to grant and convey to the town of San Francisco all the right, title and interest of the United States, and of the Territory of California, in the beach and water lots on the east front of the town, included between points known as "Rincon" and "Fort Montgomery," excepting such lots as might be afterwards selected for the use of the government by the senior officers of the United States, then present at the town. The attempted grant was subject to the condition that the property should be sold at public auction after three months previous notice.

On the 23d of June, 1847, Major General Sherman, then first lieutenant of the third artillery, and assistant adjutant general, acting under the authority of Colonel Mason, who had succeeded General Kearny, as military governor of California, directed Major Jas. A. Hardie, who was then in command at San Francisco, to consult with Commodore Biddle, or other senior naval officers on the station, and to select, in accordance with the terms of the grant of General Kearny, lots best suited for wharves, both for army and navy purposes, with space for all the buildings that it might become necessary to erect, and a suitable lot for a custom-house and the storehouses that it might require; and to inform the alcalde of the town of the selections made before the day of sale under the grant.

On the 18th of July, 1847, Major Hardie informed the alcalde of the town, that in obedience to the orders of the governors he had selected for the use of the government all that portion of Rincon Point which was not then divided off into lots, and was marked "Government Reserve" upon a map of the beach and water lots then in the alcalde's office; and that the portion thus designated included all of Rincon Point lying east of Beale street and south of Folsom street, and bounded by the tide waters of the bay; and that he had also selected certain described beach and water lots.

On the 30th of September, 1847, Colonel Mason, acting as such military governor, notified the alcalde of the town not to grant or give any deed for lots within the tract thus designated at Rincon Point, stating that the land was intended for the use of the United States government.

Several communications between the commanding generals of the country and subordinate officers, subsequent to 1847, up to the time of the admission of California into the Union, relate to the land designated at Rincon Point, and speak of it as reserved to the government for public purposes. Notices were directed by the officers to be published forbidding the erection of buildings upon the premises, or any intrusion thereon, and in some instances parties intruding were forcibly removed.

On the 27th of November, 1849, General E. D. Keyes, then captain of the third artillery, at San Francisco, executed, with the approval of Brigadier General Riley, the successor of Colonel Mason, as military governor of California, to Theodore Shillaber a lease for ten years of a part of the beach and water lots known as the government reserves, and also that portion of the upland thus designated as Rincon Point. This lease was approved by the Secretary of the Interior in April, 1851.

In June, 1851, the commissioners for the construction of public buildings at San Francisco, appointed by the Secretary of the Treasury, notified the lessee, Shillaber, that acting under the instructions of the Secretary, they had selected Rincon Point as a suitable site for a marine hospital, without however, indicating what portion of the general tract thus designated was intended. By a provision of the lease to Shillaber, the government reserved the right to take possession at any time of any portion of the property which might be required for its purposes, the lessee being allowed ninety days for the removal of any buildings, which might be placed thereon.

Previous to the selection, and on the 30th of September, 1850, Congress had appropriated the sum of fifty thousand dollars for the construction of a marine hospital, to be located by the Secretary of the Treasury, at or near San Francisco. In August, 1852, and in August, 1854, further appropriations were made for the completion of the building, and the arrangement and enclosure of the grounds upon which it is situated. But before the erection of the building was commenced, application was made on behalf of the government to the city of San Francisco for a conveyance of its interest in the land at Rincon Point, which had been selected as the site of the hospital. In accordance with that request an ordinance was passed on the 10th of December, 1852, by the common council of the city, directing the mayor to execute to the United States a conveyance of its right, title and interest to six fifty-vara lots, which include the premises in controversy. The hospital was subsequently erected on two of these six lots, being lots numbers one and two of the block, and out-buildings connected with the hospital were erected on two others of them, being numbers three and four of the block.

It is very clear, from this statement of the action of the military officers of the United States, that there was no valid reservation for public purposes made by them of the tract at Rincon Point.

The treaty of Guadalupe Hidalgo was not made until the 2d of February, 1848, and ratifications were not exchanged until the 30th of May following. Until the treaty, and long subsequently, Cali-

fornia was simply occupied by the military forces of the United States, and whatever powers the officers of the army may have exercised, from the necessity of the case, for the preservation of the country and maintenance of public order, the power to grant or dispose, or to reserve from grant or disposition, any portion of the pueblo lands, or any portion of the public property of the United States, was not one of them. They could in no respect impair any rights which the United States may have acquired over either by the conquest, or might subsequently acquire by treaty. If the absolute title to the land had passed to the United States, neither its alienation nor its reservation could have been made except by Congress, or subject to its regulation. The Constitution vests in that body the sole power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. The attempted grant to San Francisco of the beach and water lots by General Kearny was, therefore, without any validity. It was an act beyond his authority to execute, and it, of course, passed no interest whatever.

The selection made by Major Hardie of the upland at Rincon Point, for the use of the government, was not a selection in accordance with the terms of the Kearney grant, as that grant embraced only beach and water lots; nor was the selection in conformity with the instructions of Colonel Mason—under which Major Hardie purported to act. This fact, however, did not change the character of the proceeding, for such selection appears to have been subsequently approved by the commanding general. This approval, however, did not add to or give validity to the transaction. If the title had been in the United States absolutely, the selection and the subsequent acts of the military officers in excluding intruders, and in holding the premises, would not have effected an appropriation of the land to public purposes. Such appropriation of public lands could only have been made by act of Congress or order of the President, and it is not pretended that any such act was passed or any such order was made in the present case.

Nor can the legislation of Congress, in September, 1850, appropriating $50,000 for the construction of a marine hospital, to be located by the Secretary of the Treasury, at or near San Francisco, be justly considered as giving any sanction to the previous proceedings of the officers of the army, or as having any reference whatever to the property at Rincon Point. It only indicated the intention of Congress that the institution should be erected at or in the vicinity of the city; and was as applicable to any other point as the one finally selected by the commissioners of public buildings. The appropriations made in 1852 and 1854 for the completion of the building and the enclosure of the site, cannot be deemed to have any efficacy whatever, as the title had previously passed to the commissioners of the funded debt under the legislation of 1851.

There are several circumstances which go to show that the title

derived from the city is the only title upon which the United States ever relied.

In the first place, the tract designated as "Rincon Point" by the officers of the army in the proceedings to make a reservation, included all the land lying east of Beale street and south of Folsom street, and bounded by the tide waters of the bay, which embraces several entire blocks; but the United States since 1850 have made no claim, except in one instance, to any portion of it, besides the six lots embraced in the deed of the city. The exceptional instance was in 1865, when a suit was brought for the entire tract. The suit was abandoned, it is understood, upon a representation of the facts at Washington.

In the second place, in November, 1850, a formal reservation was made by order of President Fillmore, for the purpose, of the government, of several parcels of land at San Francisco, and its vicinity, and no reference was made therein to the land at Rincon Point; nor was any such reference made in any subsequent order of the Pesident respecting reservations at San Francisco. The approval of the lease to Shillaber, by the Secretary of the Interior, in April, 1851, added nothing to the validity of the attempted reservation Whilst the President was authorized, in particular cases, to reserve from sale for public uses portions of the public lands, no such power was vested in the head of any department of the government. Nor could the Secretary of the Treasury execute or approve of a lease of any property belonging to the United States without special authority of law.

In the third place no attempt was made to erect the building until after the deed of the city was obtained.

It only remains to consider the effect of the final decree in the pueblo case. Parties obtaining conveyances from the city, whilst its claim for the lands was pending before the tribunals of the United States, necessarily took whatever they acquired subject to the determination of the claim. Their title stood or fell with the claim, for the decree took effect by relation on the day when the petition of the city was presented to the land commission, in July, 1852. It is to be considered as if entered on that day.

The claim confirmed embraces an area of four square leagues, subject to certain deductions, among which are "such parcels of land as have been heretofore reserved or dedicated to public uses by the United States." It is contended that this exception covers the premises in controversy. We do not think so. The terms are fully answered by limiting the application to the four lots actually occupied by the hospital, and the reservations at the Presidio and Black Point. They cannot be extended so as to include the whole of the tract known as Rincon Point, embracing several blocks held under conveyances from the city, and which have been improved by the erection of large and valuable buildings. The construction contended for would also conflict with the concluding clause of the decree, which declares that the confirmation is in trust for the benefit of lot holders

under grants from the pueblo, town or city of San Francisco. The term grants comprehends all previous conveyances from the city.

It follows that judgment must pass for the defendants. Counsel will prepare the proper findings, and present them to the court for settlement.

FIELD, *J.*

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* Embrace the two lots claimed by the defendants without being also extended so as to,

In the Supreme Court of the United States.

Stipulation to correct the printed record.

THE UNITED STATES, plaintiffs in error,
vs.
CHARLES HARE, SAMUEL W. HOLLADAY and GEORGE F. SHARP, defendants in error.

Transcript filed Dec. 10, 1867.

It is hereby stipulated that there is an error in the printed copy of the transcript on file in the above-entitled cause, in that part of the opinion of the Circuit Court found at page 30, and in the sixth line from the bottom of said page, in which line before the word "include" there should be inserted the following words, "embrace the two lots claimed by defendants without being also extended so as to." And it is hereby consented that the clerk of the Supreme Court may insert said words above quoted in said line 6, page 30, of the printed record, between the word "to" and the word "include," so as to conform to the original opinion on file in the case in said Circuit Court, when the amended sentence will read as follows:

"They cannot be extended so as to embrace the two lots claimed by the defendants, without being also extended so as to include the whole of the tract known as Rencon Point, embracing several blocks held under conveyances from the city, and which have been improved by the erection of large and valuable buildings."

San Francisco, Cal., October 24. 1868.

S. W. HOLLADAY,
Att'y for Def'ts.

The foregoing correctly points out an error in the opinion of the circuit judge, as printed in the record, and I consent to the proposed correction; but as the opinion forms no part of the record there is no necessity for an amendment.

October 26, 1868.

DELOS LAKE, *U. S. Att'y.*

Endorsed: No. 215. Supreme Court of the United States. The United States, pl'ffs in error, *vs.* Charles Hare *et al.* Stipulation to correct the printed record. Filed 15th Dec'r, 1868. S. W. Holladay, att'y for def'ts.